Supreme Court, U.S.
FILED

01 670 OCT 19 2001

OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

Hope Lutheran Church of Hastings, Minnesota,
Petitioner,

v.

Shepherd of the Valley Lutheran Church
of Hastings, Minnesota,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

MARSHALL H. TANICK
Counsel of Record
MANSFIELD TANICK & COHEN, P.A.
900 SECOND AVENUE SOUTH
SUITE 1560
MINNEAPOLIS, MN 55402-3383
(612) 339-4295

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

83pp

QUESTION PRESENTED

Is it a violation of the Free Exercise and Establishment clauses of the First Amendment to the U.S. Constitution for a state jury and judge to resolve a disagreement within a church congregation by determining that the dispute concerns religious "doctrine," thereby awarding church property to a minority faction of the congregation despite votes by a large majority of the congregants that the dispute is "non-doctrinal" and that the property should belong to the majority of those members of the organization, in accordance with the governing documents of the church?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 1

CONSTITUTIONAL PROVISION 1
FIRST AMENDMENT TO THE U.S. CONSTITUTION 1
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, SEC. 1 2

STATEMENT OF THE CASE 2
A. Introduction 2
B. Factual Background 3
1. The Two Factions of the Congregation 3
2. The Majority Vote to Separate 5

PROCEEDINGS BELOW 7
A. The "Doctrinal" v. "Non-Doctrinal" Dispute . . 7
1. The Constitutional Issues 8
2. The Jury's Special Verdict 9
3. The Trial Judge's Attempt to Reconcile 10
B. The Appeal 11

ARGUMENT 12
I. THE RULING IN FAVOR OF THE MINORITY FACTION OF THE CONGREGATION ON "DOCTRINAL" GROUNDS VIOLATES THE FREE EXERCISE AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT 12
A. The Frequency of Intra-Congregational Litigation 12
B. The Church is "Congregational" and Must Abide by Majority Rule 14

II. THE OUTCOME BELOW CONFLICTS WITH THIS COURT'S WELL-ESTABLISHED JURISPRUDENCE 15
A. The Adjudication of Similar Cases 15
B. The Deviation of the Courts Below 20

CONCLUSION 26

TABLE OF AUTHORITIES

CASES **Page**

Boudin v. Alexander,
82 U.S. 131 (15 Wall. 131) (1872) 14

Cantwell v. Connecticut,
310 U.S. 296 (1940) 13

Erie Railroad Co. v. Tompkins,
304 U.S. 64 (1938) 16

First Baptist Church of Glenn Este v. Ohio,
591 F. Supp. 676 (S.D. Ohio 1983) 14

Franco v. Church of Jesus Christ of Latter Day Sts.,
21 P.3d 198 (Utah 2001) 24

Grace Evangelical Lutheran Church of River Forest v. Lutheran Church - Missouri Synod,
454 N.E. 2d 1038 (Ill. App. Ct. 1983),
cert. denied, sub. nom 20, 24

Jones v. Wolf, 443 U.S. 595 (1979) . . . . . passim

Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94 (1950) 13, 16

Kennedy v. Gray, 807 P.2d 670 (Kan. 1991) 14

Kreshik v. St. Nicholas Cathedral of Russian Orthodox Church, 363 U.S. 190 (1960) 13, 16

Lemon v. Kurtzman, 403 US. 602 (1971) 17, 24

Maryland & Virginia Eldership of Churches of God v. Church of God, Inc.,
396 U.S. 367 (1970)
(per curiam) 12, 18, 22, 24

Nunn v. Black, 506 F. Supp. 444 (W.D. Va. 1981),
aff'd mem. 660 F.2d 925 (4th Cir. 1981) 14

Odenthal v. Minnesota Conf. of Seventh Day Adventists,
632 N.W.2d 783 (Minn. Ct. App. 2001) 24

Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,
393 U.S. 440 (1969) . . . . . passim

Serbian Eastern Orthodox Diocese v. Milivojevich,
426 U.S. 696 (1976) . . . . . passim

Shepherd of the Valley Lutheran Church v. Hope Lutheran Church,
626 N.W.2d 436 (Minn. App. 2001),
rev. denied (July 24, 2001) 3

Watson v. Jones,
80 U.S. 679 (13 Wall. 679) (1871) 16, 17

Werlang v. Grace Evangelical Lutheran Church,
469 U.S. 820 (1984) 20, 21

CONSTITUTION

First Amendment . . . . . passim

Fourteenth Amendment, Section 1 . . . . . 2, 13

STATUTES

28 U.S.C. § 1257 1

OTHER AUTHORITY

R.J. Bohner, Jr., NOTE: Religious Property Disputes and Intrinsically Religious Evidence: Towards a Narrow Application of the Neutral Principles Approach, 35 Vill. L. Rev. 949, 981 (1999) 25

Giovan Harbour Venable, Courts Examine Congregationalism, 41 Stan. L. Rev. 719, 745 (1989) 13

John E. Fennelly, Property Disputes and Religious Schisms: Who is the Church, 9 St. Thomas L. Rev. 319 (1977) 13

Kent Greenawalt, Hands Off! Civil Court Involvement in Conflicts Over Religious Property, 98 Colum. L. Rev. 1843, 1907, n.1 (1998) 12, 13, 14

OPINIONS BELOW

The Special Verdict Form, Findings of Fact, Conclusions of Law, and Order for Judgment and Amended Findings of Fact, Conclusions of Law, and Order for Judgment of the Trial Court, the Dakota County District Court, are unpublished and are reprinted in the appendix. App. at 16a, 21a, and 38a. The opinion of the Minnesota Court of Appeals is reported at 626 N.W.2d 436 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). App. at 3a. The decision of the Minnesota Supreme Court denying a Petition for Review is unpublished and is reprinted in the appendix. App. at 1a.

JURISDICTION

The ruling of the Minnesota Court of Appeals was entered on May 8, 2001. App. at 3a. The Order of the Minnesota Supreme Court denying the Petition for review was entered on July 24, 2001. App. at 1a.

This Court has jurisdiction to review the judgment of the Appellate Court under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION

First Amendment to the U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

Fourteenth Amendment to the U.S. Constitution, Section 1

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...."

STATEMENT OF THE CASE

A. Introduction

This case concerns an intra-congregational religious dispute within a relatively small Lutheran church in Hastings, Minnesota, located about twenty-five miles southeast of Minneapolis-St. Paul. A majority of the congregants, dissatisfied with actions and inactions of the Pastor, voted to separate from the existing church for "non-doctrinal" reasons and to transfer the church property to the majority group. The remnants of the congregation sued to determine the right to the church property and for breach of fiduciary duty by one of the lay officers of the church, Gregory Collins, who was one of the leaders of the majority faction.

The state trial court submitted to a jury the issue of whether the dispute was "doctrinal." The jury, in a ruling adopted by the trial judge, answered in the affirmative, contradicting the congregation's own internal determination by majority vote that the dispute was "non-doctrinal" in nature. The jury also determined that the majority group adhered to the governing documents of the church in its decision to separate and transfer the property, but then decided that the minority group had the right to the church property. It also found a breach of fiduciary duty by Collins,

the church's lay officer and awarded damages of $7,782.99. App. at 32a-33a.

Based upon the jury's determination, the trial judge entered judgment in favor of the minority faction, requiring the church property to be given to it, and imposing damages against Collins. App. at 32a-33a.

The State Court of Appeals affirmed the trial court's ruling. *Shepherd of the Valley Lutheran Church v. Hope Lutheran Church*, 626 N.W.2d 436 (Minn. App. 2001), *rev. denied* (July 24, 2001). App. at 15a. The Minnesota Supreme Court, in exercise of its discretion, declined to review the decision. App. at 2a. As a result, the majority will of the congregation was overturned by the state court, the church property transferred to the minority faction, and damages awarded to it for the way the separation was handled within the congregation.

B. Factual Background

1. The Two Factions of the Congregation

The Shepherd of the Valley Church ("SOTV") in Hastings, Minnesota, is a 275-member congregation of the Minnesota Southern District of the Lutheran Church - Missouri Synod ("LCMS" or "Synod").[1]

The LCMS functions on a "congregational" basis, with each congregation autonomously governing its own

---

[1] The LCMS, is a 154-year old organization headquartered in Kirkwood, Missouri. With some 2.6 million members, it is the ninth largest denomination in the United States.

affairs. App. at 31a, 42a. The LCMS Constitution and By-Laws disclaim any role for the Synod as "an ecclesiastical government" and describe its function as "an advisory group" to local churches, who are free to disregard its views if deemed "inexpedient" or not in conformance with the "Word of God," as understood by the congregants. App. at 42a. Accordingly, the organic documents of the LCMS state that the Synod's views on church-related matters are not "binding." *Id.*

The SOTV Constitution, consistent with the congregational structure of the church, declares that the "congregation . . . shall have supreme power in the administration of its affairs." App. at 45a. Both the Constitution and Articles of Incorporation of SOTV, provide that disputes about property within the congregation that are "doctrinal" in nature will be resolved in favor of those who follow the "confession and practice" of the church, while disputes that are "non-doctrinal" in nature shall be resolved by "majority" decision. App. at 46a-48a. Another provision of the church's Articles of Incorporation reaffirms the policy of majority rule, stating that, "[a]ll congregational matters shall be decided by a simple majority of the qualified Voting Members. . . ." App. at 48a.

The congregation owns a church building on about 4.3 acres of valuable land. The facility is located in a desirable area of Hastings, adjoining a new residential development, and adjacent to the county government building and a nearby new high school.

A dispute developed within the congregation in 1997, centering around the activities of the Church's minister, Pastor Bruce King, who had begun serving the Church in July 1997. The issues included the perceived lack of pastoral and

interpersonal skills on the part of the Pastor, unresponsiveness to parishioners with health problems, intolerance to other faiths, a narrow interpretation of certain church practices, and failure to provide pastoral care to those who questioned his practices. Another issue was whether Lutheran non-congregants could partake in the religious practice of communion at the church or whether communion should, as the Pastor wished, be "closed" and restricted to members of the congregation and disallowing visitors, guests, family members of the church congregants, or members of other Lutheran churches.

The dissatisfaction within the congregation was widespread, leading a number of members to consider separating from the existing organization. Gregory Collins, a lay Vice President of the congregation, was one of the leaders of the group.

The dispute reverberated throughout the congregation and church hierarchy. Some of the Elders of the congregation supported the minister and his backers, while others indicated their support for the majority group. The local District of the Synod, in its "advisory" role, attempted to work with Pastor King to resolve the issues and later sought to mediate the dispute. Those who objected to the Pastor also sought advice from leaders of the local District about how to handle the internal problems.

2. *The Majority Vote to Separate*

As the problems remained unresolved, the majority of congregants informed the LCMS of their concerns and plan to seek a separation. The local District of the Synod did not voice any objection, saying only that it was "unusual" and cautioning them to seek legal advice about forming a new

entity, which they did. The District also recommended that notice be given to the President of the Church, which was done.

At the congregation's duly-noticed annual meeting on November 15, 1998, the membership of the church voted to separate into a new congregation, known as Hope Lutheran Church ("Hope") and to transfer the church property and assets to it. The congregation first voted by nearly a two-thirds majority, 72-38, to decide whether the dispute was "non-doctrinal." It then voted by a sizable majority, 66 to 41, to separate and to transfer church assets to the newly formed Hope group. Collins and another church officer affected transfer of the church's real estate to the Hope congregation, pursuant to the approval of the majority of the congregation.[2]

The new Hope group stayed within the LCMS and was provided with pastoral services for more than a year by the local District of the Synod. The Synod later rejected the application of the Hope group for membership in the LCMS, after the Church's Constitution had been provisionally approved.

The SOTV minority group sued both Hope and Collins in Dakota County District Court. SOTV claimed that the

---

[2] Rev. Dr. Lane R. Seitz, President of the local District of the Synod, later issued a "Statement of Findings" that the issues leading up to the split of the church were "doctrinal." The opinion was not furnished to Hope or its representatives until this lawsuit was commenced. Because the Synod is a congregational rather than a hierarchical church, the Synod's "advisory" opinion is not binding. App. at 42a-43a.

separation and transfer of property were based upon doctrinal questions and violated church protocols and that Collins breached his fiduciary duty to the organization. The lawsuit sought to determine rights to the church property, eject the Hope congregation from the facility, and damages from Hope and Collins, who was elected President of the Hope church by the congregants of Hope after the separation.

PROCEEDINGS BELOW

A. The "Doctrinal" v. "Non-Doctrinal" Dispute

The case was tried before a jury over a span of 2 ½ weeks in late May and early June, 2000. The testimony about religious doctrinal issues permeated the trial. A number of witnesses discussed the "divine call" of a minister to a parish, methods of preaching the gospel, installation ceremony of a minister to a parish, Communion practices, religious fellowship, the role of elders, and the Bible in general.

Officials of the Synod, the "advisory" umbrella body, testified in support of the SOTV minority group. They opined that its followers adhered to the teaching and ways of the Synod, and should be entitled to the church property, a disputed issue that consumed a substantial segment of the trial.

The SOTV faction introduced an abundance of evidence about religious doctrine and rituals to support its view that the dispute was "doctrinal" in nature: that its adherents were faithful to the "confession and practice" of the Synod, as testified to by the Synod leadership, and that SOTV was entitled to prevail under the church's Constitution and Articles of Incorporation, and that the majority Hope group

wrongfully took over the congregation and its property. App. at 24a-25a.

The Hope group maintained that the dispute was "non-doctrinal," as reflected in the overwhelming majority vote of the congregation. It contended that it had followed all proper procedures under the governing documents of the congregation and was entitled to the church property. App. at 35a-36a.

1. The Constitutional Issues

The Hope group also raised Constitutional claims under the Freedom of Religion and Establishment Clauses of the First Amendment throughout the proceedings below. It contended that the lawsuit infringed the First Amendment by interfering with the religious affairs and polity of the congregation and created entanglements between the secular civil law and the faith and religious beliefs of church members.

The Constitutional issues were first raised by the Hope group as a defense in the Answer to the lawsuit, asserting that the Complaint was "barred by the First Amendment of the United States Constitution and the Minnesota Constitution." It also asserted the Constitutional issues in response to a Motion for Summary Judgment by SOTV, which was denied without explanation by the trial court. Both the trial court and Minnesota Court of Appeals addressed the Constitutional issues in their decisions. App. at 8a, 35a-36a. In its Petition for Review to the Minnesota Supreme Court, constitutional issues also were raised, as follows:

> Is it an unconstitutional entanglement with church governance for a court to nullify the

> legitimate majority vote of the members of a church with a congregational form of governance?
>
> * * * * * *
>
> Did the Court of Appeals and Trial Court create as well as commit error when they permitted the Jury to decide what constituted religious doctrine in this case?

The Petition was denied summarily. App. at 2a.

2. *The Jury's Special Verdict*

At the end of the trial, the jury and judge agreed, in part, with both disputants. The judge submitted to the jury a Special Verdict Form consisting of eight questions. The first inquiry asked the jury whether the dispute was "doctrinal." App. at 38a. The jury responded that it was. The next two Special Verdict questions asked whether the majority Hope group acted in accordance with governing documents of the church in the separation and transfer of the church property, and the jury answered both questions affirmatively. App. at 39a.

But the jury answered the balance of the Special Verdict form in favor of the SOTV. In Questions 4 and 5, the jury responded that SOTV was the "proper owner" of the Church and was entitled to the Church property. *Id.* In Questions 6, 7, and 8, the jury found that Collins had breached his fiduciary duty to the Church and awarded damages to SOTV of $7,782.99. App. at 40a.

3. *The Trial Judge's Attempt to Reconcile*

The Trial Judge, faced with the task of reconciling these inconsistent responses, adopted the Special Verdict as Findings of Fact. App. at 31a-32a. He observed that the first, and foremost, question, whether the dispute was "doctrinal" in nature, was advisory, not binding, and was submitted to the jury for "informative purposes only." App. at 35a.

In his post-trial ruling, the trial judge elaborated on his reasoning, stating that none of the organic documents and other governance instruments of the Synod or church provided a procedure for "resolution of doctrinal disputes. . . ." App. at 35a. The judge then explained that, whether the dispute was "doctrinal" or "non-doctrinal," the majority will of the congregation must prevail. He reasoned that if the dispute was "doctrinal," as the SOTV claimed, "the Court must apply the presumption of majority rule." App. at 36a. If the dispute was non-doctrinal in nature, as the Hope faction asserted, the majority vote of the congregation would also be determinative under congregation's Constitution and Articles. App. at 36a. Thus, the Judge concluded that, regardless how the dispute was characterized by the jury, "doctrinal" or "non-doctrinal," the majority of the congregation constituted the "highest ecclesiastical authority" and its will was determinative. App. at 37a. The court also noted that the jury had "determined" that the Hope faction "did follow" the church's governing documents "in bringing about the separation." App. at 37a.

Having concluded that majority rule should govern, regardless whether the dispute was "doctrinal" or "non-doctrinal," and that the Hope faction followed the required protocols, the trial judge departed from this reasoning. He entered judgment in favor of the minority SOTV group, notwithstanding the majority decisions of the congregation,

ordered that the property be tendered to it, and awarded judgment for $7,782.99 against Collins. App. at 33a.

B. The Appeal

The Hope group appealed the trial court's decision to the Minnesota Court of Appeals, the intermediate State Appellate body, which affirmed the trial court's decision. After observing that the case involved a "doctrinal dispute among the congregation of SOTV," the appellate tribunal examined the breach of fiduciary duty issue without further reference to any Constitutional issues. App. at 8a. It affirmed the ruling of the Trial Court on the merits, while reversing and remanding for determination of taxable costs to the Shepherd of the Valley group. App. at 15a.[3]

A petition was taken by the Hope group to the Minnesota Supreme Court, which exercises discretion over civil appeals. Hope timely raised Constitutional issues under the First Amendment in its petition. The Supreme Court denied review, without explanation, on July 24, 2001. App. at 2a. This petition ensued, pursuant to 28 U.S.C. § 1257, which authorizes appeals by certiorari from the final determination of the highest court within a state.

---

[3] On remand, the trial court awarded an additional $60,927 to be paid by Collins and Hope Lutheran Church representing damages for keeping the SOTV from the church during the appeal.

ARGUMENT

I. THE RULING IN FAVOR OF THE MINORITY FACTION OF THE CONGREGATION ON "DOCTRINAL" GROUNDS VIOLATES THE FREE EXERCISE AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT.

A. The Frequency of Intra-Congregational Litigation

This case concerns an issue that arises frequently in State and Federal lower courts, but has been addressed only infrequently by this Court: the role of secular civil courts in addressing and resolving disputes within religious groups, especially those organized on a "congregational" basis whose local churches exercise autonomy. This type of litigation, centering over control of church property, is not unusual. During a 50 year span from 1948 to 1997, there were nearly 500 reported court rulings by State and Federal Trial and Appellate Courts addressing issues of church involvement in such disputes. *Kent Greenawalt*, Hands Off! Civil Court Involvement in Conflicts Over Religious Property, 98 Colum. L. Rev. 1843, 1907, n.1 (1998).

Despite this volume of cases, averaging ten reported decisions each year and probably many other unreported ones, this Court has not issued a full-scale opinion on the subject in more than 20 years and only a handful of decisions in the past three decades. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Maryland & Virginia Eldership of Churches of God v. Church of God, Inc.*, 396 U.S. 367 (1970) (per curiam); *Presbyterian Church in United States v. Mary*

Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969).

Disposition of these cases over the years has left unresolved issues that are at the heart of the present litigation. The present case, similar to others of this genre, "raise[s] very difficult constitutional issues," amidst a subject that consists of "struggles beneath tranquil surface waters." *Greenawalt*, *supra* at 1905. The urgency to provide guidance in resolving this type of dispute emanates from what a respected scholarly jurist decries as the "welter of contradictory and confusing case law largely devoid of certainty, consistency, or sustained analysis." John E. Fennelly, Property Disputes and Religious Schisms: Who is the Church, 9 St. Thomas L. Rev. 319, 353 (1977). Note: Courts Examine Congregationalism, 41 Stan. L. Rev. 719, 745 (1989) (lamenting absence in the case law of "any consistency when resolving church property disputes . . .").

In this case, the lower courts erred in addressing and deciding core questions of both religious doctrine and internal church governance. In so doing, they created the type of inevitable danger of government "entanglement" that precludes judicial involvement in religious matters and church polity. *See Milivojevich*, 426 U.S. at 721. The judicial treatment and disposition of these issues transgress the limited role of the civil courts under the Free Exercise and Establishment clauses, provisions that govern both legislative and judicial determinations and are applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut* 310 U.S. 296, 303 (1940). *See also Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1950); *Kreshik v. St. Nicholas Cathedral of Russian Orthodox Church*, 363 U.S. 190, 191 (1960).

B. The Church is "Congregational" and Must Abide by Majority Rule

Generally, there are two types of church polity or administration: one is congregational, in which a local church controls its own destiny, the other is hierarchical, in which authority is exercised in ascending order. *Greenawalt, supra* at 1863-64. In the present case, the church in Hastings had a congregational polity, as testified to at trial and found by the trial court. App. at 31a. These organizations generally are treated, for governance purposes, similar to other ordinary voluntary associations. *Id.* at 1867. *Boudin v. Alexander*, 82 U.S. 131 (15 Wall. 131) (1872); *Kennedy v. Gray*, 807 P.2d 670 (Kan. 1991); *Nunn v. Black*, 506 F. Supp. 444, 448 (W.D. Va. 1981), *aff'd mem.* 660 F.2d 925 (4th Cir. 1981); *First Baptist Church of Glenn Este v. Ohio*, 591 F. Supp. 676, 683 (S.D. Ohio 1983).

The organic documents of the Synod and local church reflect this principle. Two of the provisions in the congregation's governance instruments give "supreme power in the administration of [church] affairs" to the congregation. App. at 45a, 47a. The Synod's Constitution places the Synod only in the role of an "advisory body." App. at 42a. Thus, disagreements within the church are to be decided by the congregation, whose determination is "supreme." App. at 45a, 47a. In addressing property disputes, the SOTV documents differentiate between disputes which are "doctrinal" and those which are "non-doctrinal." The former are to be decided in accordance with the congregants who follow the "confession and practice" of the Lutheran Church, while the latter are to be resolved by majority vote. App. at 46a-48a.

Neither the congregation's governance documents nor those of the Synod's expressly direct which body is to decide if a dispute is "doctrinal." But since the Congregation's decision is "supreme" and the Synod's role only "advisory," it is the Congregation that must determine, if a disagreement is "doctrinal," in which event those following church "confession and practice" deemed correct, or it if is "non-doctrinal," in which event the majority prevails.

In this case, the members of the congregation, in the exercise of their "supreme" authority, made those decisions at its meeting of November 15, 1998, deciding by an overwhelming majorities that the dispute was non-doctrinal and approving transfer of the church property to the majority Hope group. The overturning by the trial court of the majority will of the congregation, which is deigned "supreme" under the church's organic documents, constitutes an impermissible intrusion into both principles of faith and polity of the congregation in conflict with the First Amendment guarantees of religious freedoms.

II. THE OUTCOME BELOW CONFLICTS WITH THIS COURT'S WELL-ESTABLISHED JURISPRUDENCE

A. The Adjudication of Similar Cases

The Courts below were called on to resolve a dispute between two factions of the congregation: the majority group desiring changes in the congregation for non-doctrinal reasons, and minority faction maintaining that it adhered to the "doctrinal" truth. Underlying the religious dispute is the control over valuable church property, including the church building and the real estate on which it is situated.

This Court's treatment of this kind of dispute dates back to *Watson v. Jones*, 80 U.S. 679 (13 Wall. 679) (1871), which involved a dispute over church property between slavery and anti-slavery factions of a church congregation. The case was decided solely on Federal common law grounds, well before the demise of that doctrine in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). Subsequent rulings have recognized that judicial intervention in disputes over religious dogma and governance raises Constitutional concerns under the Free Exercise and Establishment clauses of the First Amendment. *See Kedroff*, 344 U.S. 94; *Kreschik*, 363 U.S. 190.

The lower court's disposition of the present case clashes with this Court's approach to church congregational issues, as reflected in a quartet of cases decided during the decade between 1969 and 1979. The principle of those cases is that secular courts are forbidden, under the First Amendment, from determining questions of religious doctrine and polity. The principle of non-involvement dictates that civil courts not intervene in internal governance disputes of religious bodies or attempt to resolve doctrinal issues.

But the trial court did not heed this admonition. Rather than steering clear of the intra-congregation fracas, it leaped into it, allowing the jurors to hear and assess the religious beliefs of the litigants and their supporters, and making a decision that a "doctrinal" dispute existed, which utterly contradicted the view of the overwhelming majority of the congregation. It then stripped the majority of possession of the church property, after concluding that it followed all proper congregational protocols, and handed the property over to the minority faction, despite the adherence by the majority to all applicable church policies.

Allowing the civil courts, including juries, to decide these issues necessarily involves them in addressing matters about which they are ill-equipped. It also plunges the judicial system into the type of "excessive entanglements," that is anathema to the Free Exercise and Establishment clauses. *E.g.*, *Lemon v. Kurtzman*, 403 US. 602, 612 (1971); *Milivojevich*, 426 U.S. at 717.

The Constitutional limitations were fully recognized in *Mary Elizabeth Blue Hull*, *supra*, which centered around withdrawal of churches in Georgia from a national church and the claimed entitlement by the local congregations of church property because the national church had departed from the denomination's doctrinal practices. 393 U.S. 442. The state trial court, as in the present case, submitted the case to the jury, asking it to decide whether the national church had deviated from the tenets and doctrines of the denomination in order to justify the separation by the local congregations. *Id.* at 443. The jury ruled for the local churches, and the State Supreme Court affirmed. *Id.* at 444.

But this Court reversed, emphasizing that "[s]pecial problems arise . . . when [property] disputes implicate controversies over *church doctrine and practice*." *Id.* at 445 (emphasis supplied). Recognizing the "clear constitutional ring" of the century-old decision in *Watson v. Jones*, the Court stated that the First Amendment "leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes." *Id.* at 446-47 (emphasis supplied). These disputes should be off-limits to civil courts because they concern "matters at the very core of a religion" and, if passed upon by civil courts, result in "inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Id.* at 449.

Noting that "First Amendment values are plainly jeopardized when church property litigation . . .[turns] on the resolution by civil courts of controversies over religious doctrine and practice,." the Court in *Mary Elizabeth Blue Hull* directed the use of "neutral principles of law" to resolve religious congregational property disputes while prohibiting the civil courts from trying to "resolve underlying controversies over religious doctrine." *Id.* (emphasis supplied). *See also Milivojevich*, 426 U.S. at 721-22, (applying "neutral principles" in disputes over church administrative matters as well as religious doctrine).

This outlook was reinforced in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, *supra*, which dismissed the appeal of a church property dispute for want of a substantial federal question. The decision below was not subject to review because it had been resolved in the state courts according to the terms of the organic documents of the competing church bodies. This jurisprudential practice was proper since it "involves no consideration of doctrinal matters." 396 U.S. at 368 (Brennan, J. concurring).

In *Milivojevich*, the Court reversed the ruling of the Illinois state court system, setting aside the removal of a prelate from a local church by the hierarcheral national organization. *Id.* at 698. This Court was concerned with the interference by the civil courts into church polity, an intrusion deemed equivalent to a prohibited "civil determination of religious doctrine." 426 U.S. at 709; quoting *Maryland and Virginia Eldership of the Church of God,* 396 U.S. at 369 (Brennan, J., concurring).

Finally, in *Jones v. Wolf*, *supra*, the most recent foray into the thicket of church property disputes 32 years ago, this

Court identified a limited role for civil courts in resolving these disputes, allowing them to reply on authoritative documents that can be interpreted without invoking religious understandings. In *Jones*, as in the present case, the bulk of the members of the local congregation were disaffected with church activities and practices. The majority voted to withdraw from the national church and join another denomination. *Id.* at 598. After the church hierarchy declared the remaining minority faction to be the "true congregation," the minority then sued, as in the present case, to establish their entitlement to the local church property. *Id.* The lower courts sided with the majority faction and awarded it the property.[4]

While remanding the case for clarification of the grounds decided below, the Court in *Jones v. Wolf* reiterated its endorsement of "neutral principles of law as a means of adjudicating a church property dispute." *Id.* at 604. This methodology eschewing inquiry into religious doctrine, calls for adjudication based on "objective, well-established concepts" of law, which may be reflected in organic documents of churches, property deeds and other documents. *Id.* at 603.

This Court noted in *Jones v. Wolf* that the presumption of majority rule ordinarily is appropriate, absent provisions in the corporate charter or constitution of a church providing for a different mechanism. *Id.* at 607. Courts may not rely upon

---

[4] The Hope faction in this case sought to stay within the Synod, applying to the local District of the LCMS for membership before the split. The group's Constitution was approved provisionally, but the Board of the District, after three meetings, denied the request.

"consideration of religious doctrine and polity" in making this determination. *Id.* at 608.

This "objective" and non-doctrinal approach was endorsed in *Jones v. Wolf* because it will "ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members" of the religious organization. *Id.* at 604. Thus, accommodating the views of the majority of the congregants is the basis for use of the "neutral principles" analysis.

B. The Deviation of the Courts Below

The clear and unmistakable message of this quartet of cases, during the decade of 1969-1979, is that civil courts may not adjudicate religious "doctrinal" battles within congregations, nor intrude into the administrative polity of congregationally-based religious organizations. Avoiding these pitfalls, the courts instead should seek out "neutral principles" derived from well-established legal principles and apply them to resolve these lawsuits. The courts below did not adhere to these principles when it engaged in an analysis of religious "doctrine," disregarded the congregation's polity, and demonstrated a disdain for the "neutral" principle of majority rule as established in the organic instruments of the congregation and the Synod.

The proper limits of judicial intervention in a church doctrine and polity dispute of this type is reflected in another case involving the same Synod. In *Grace Evangelical Lutheran Church of River Forest v. Lutheran Church - Missouri Synod*, 454 N.E. 2d 1038 (Ill. App. Ct. 1983), *cert. denied, sub. nom.; Werlang v. Grace Evangelical Lutheran Church*, 469 U.S. 820 (1984), a congregation had purchased property from the Synod and had built a church on that

property under an agreement allowing the Synod to repurchase the property if one of three different conditions occurred. *Id.* at 1040. Following a dispute between the Synod and the church regarding ordination of a cleric, the majority of the local congregation voted to withdraw from the Synod. *Id.* at 1041. The Synod then sought to exercise its option to repurchase the property under the contract which allowed it to do so if the local church did not "teach and preach the Scriptures in accordance with the rules, regulations, and customs of [the Synod]." *Id.* at 1040. The court declined to enforce the Synod's right to exercise its option, concluding that it "cannot constitutionally make the extensive inquiry and evaluation necessary to determine the polity of the Synod with respect to doctrinal matters." *Id.* at 1046.

The trial court in the present case engaged explicitly in this type of improper "doctrinal" inquiry in a misguided and constitutionally defective effort to resolve the dispute caused by the separation by the majority of congregants and transfer of church property. It should, like the Illinois court, have refrained from doing so in order to avoid having to decide "doctrinal positions" within the church. *Id.* at 1043.

The trial court in this case had available to it "neutral principles" that could have been used to avert running afoul of the religious restrictions in the First Amendment. The neutrality consists of examining the church's governing documents and following their provisions in resolving internal discord. *Jones,* 443 U.S. at 605-06.

The Church documents here did not contain an explicit directive on how property control disputes should be addressed. *Id.* at 602. None of the organic documents of the Synod or the Church provides a mechanism for determination

of these disputes by any higher authority. Rather, they establish the congregation as the "supreme power." App. at 45a, 47a. The congregation, in the exercise of majority rule, acts as "the highest ecclesiastical authority." App. at 35a.

This congregation decided, by overwhelming votes, that the disagreements were non-doctrinal in nature, to separate and to transfer the church property to the majority. Upholding the validity of the majority votes would have permitted the court to treat this church akin to other voluntary associations and avert the type of Free Exercise and Establishment problems that are rampant in this case. *Milivojevich*, 426 U.S. at 728-29 (Rehnquist, J., dissenting).

The trial court in this case erred by taking on the dispute and submitting to the jury a determination of whether it was a "doctrinal" disagreement, adopting the jury's affirmative answer, and then endorsing that response and entering judgment based upon its view of the "doctrinal" disagreement. The result was "to make available the coercive powers of civil courts" to pass on a doctrinal decision, a practice that "create[s] far more serious problems under the Establishment Clause" than deferring to neutral principles of secular voluntary association. *Milivojevich*, 426 U.S. at 734 (Rehnquist, J. dissenting). Deference to majority rule, a "neutral principle" embodied in the church's own protocols of governance, would be consistent with this Court's ruling in *Maryland and Virginia Eldership*, 396 U.S. at 368 (dismissal of appeal because the state court's resolution of dispute involved "no inquiry into religious doctrine").

In contrast to the utilization of "neutral principles," the state trial court proceedings in this case were hopelessly confused. The jury, acting only in an "informative" capacity, listened to weeks of testimony about religious dogma and then

found that the dispute was "doctrinal." App. at 35a. It also decided that the Hope group followed all of the applicable governance documents. But, it also found in a baffling inconsistency, that the minority faction was entitled to the property, even though the majority group adhered to all applicable requirements.

The only explanation for these perverse determinations is the predicate that this dispute was "doctrinal," a position embraced by the trial judge in his adoption of the jury's advisory decision. App. at 31a. But neither secular juries or judges are permitted to engage in this type of religious review without running afoul of the inevitable charges of governmental entanglements. *Milivojevich*, 426 U.S. at 721-22, 724-25.

To compound the problem, the trial judge, in his post-trial ruling, sought to use "neutral principles," but applied them improperly. The judge declared that the "presumption of majority rule" applies to "doctrinal" disputes, yet disregarded that the majority of the congregation, including some members of the SOTV flock, who viewed the dispute as non-doctrinal. App. at 36a-37a. The trial judge also stated that, if the dispute is non-doctrinal, the majority vote should prevail. App. at 36a. Thus, in the eyes of the trial judge, whether characterized as "doctrinal" or not, the dispute must be resolved as willed by the majority.

Then, in a 180° turnabout, the judge adopted the portion of the jury's Special Verdict awarding the church property to the minority group. This constituted blatant disregard for the "neutral principles" required in the adjudication of intra-congregational church property disputes.

The trial court presumably went astray because of the jury's finding that Collins, as an officer of SOTV, breached his fiduciary duty by working with the majority faction which eventually became Hope. But the majority Hope faction was acting consistent with the church's Constitution, By-laws and Articles of Incorporation, as the jury found and as the trial judge concurred. App. at 35a-36a, 39a.

Allowing a claimed fiduciary breach conflicts with the governing protocols of the church and cannot stand. Permitting tort claims to override church polity constitutes an impermissible intrusion on the First Amendment since it invites the type of "excessive entanglements" that are proscribed by both the Free Exercise and Establishment clauses. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971); *Milivojevich*, 426 U.S. at 721; *Franco v. Church of Jesus Christ of Latter Day Sts.*, 21 P.3d 198, 203 (Utah 2001) (excessive entanglement issue in addressing tort liability of clergy); *Odenthal v. Minnesota Conf. of Seventh Day Adventists*, 632 N.W.2d 783 (Minn. Ct. App. 2001) (accord). *See also Grace Evangelical Lutheran Church*, 469 U.S. 820.

The court below grievously erred by undertaking an impermissible inquiry into religious doctrine in an inappropriate effort to "resolve ecclesiastical questions" that are outside the ambit of the secular courts under the First Amendment. *See Mary Elizabeth Blue Hull*, 393 U.S. at 449; *Maryland and Virginia Eldership Church of God*, 396 U.S. at 368. State courts have an "obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones*, 443 U.S. at 602. Carrying out this mission requires the application of "neutral principles" of law, a practice that was not followed in this case.

The Courts below should have confined their role to ascertain if "neutral principles" existed that could resolve this dispute. Had that been done, they would have applied the "majority vote" tenet that guides most voluntary associations, as expressly embodied in the church's own organic documents, and as urged by the trial judge in his post-trial reasoning. App. at 36a.

Application of this mechanism "properly places intrinsically religious evidence . . . outside the purview of the court's inquiry." *R.J. Bohner, Jr.*, NOTE: Religious Property Disputes and Intrinsically Religious Evidence: Towards a Narrow Application of the Neutral Principles Approach, 35 Vill. L. Rev. 949, 981 (1999). But this case was replete with "religious evidence," which should never have been brought before or passed upon by a civil court jury, or judge, in the first instance. The trial court, both jury and judge, was required to listen, parse, and determine whether any "doctrinal" disagreements existed between the clashing factions of the church and how to resolve that dispute, even though the church's own documentation provided for majority rule. The court could have, and should have, applied the doctrine of "neutral principles" to determine this issue under the church's own internal documents, properly deferring to the majority will of the congregation. But it did not do so, utilizing religious dogma instead in making decisions about church doctrine and polity.

The judgment of the trial court, as affirmed by the Minnesota Court of Appeals, infringes the Freedom of Religion and Establishment Clauses of the First Amendment. Because of the prevalence of the type of litigation, the length of time which has passed since this Court last addressed the issue, and the perversity of the outcome of this case, review by this court is appropriate and timely.

CONCLUSION

For the above reasons, the Petition should be granted and a Writ of Certiorari issued.

Respectfully submitted,

Marshall H. Tanick (108303)
Counsel of Record
MANSFIELD, TANICK & COHEN, P.A.
1560 International Centre
900 Second Avenue South
Minneapolis, MN 55402-3383
(612) 339-4295

ATTORNEYS FOR PETITIONER HOPE LUTHERAN CHURCH OF HASTINGS, MINNESOTA

APPENDIX A

SUPREME COURT OF MINNESOTA

No. C3-00-1518

July 24, 2001, Filed

Shepherd of the Valley Lutheran Church of Hastings, a Minnesota Non-Profit Corporation, *Respondent*,

vs.

Hope Lutheran Church of Hastings, Minnesota, a Minnesota Non-Profit Corporation, and Greg Collins, *Petitioners*.

JUDGES:
Kathleen A. Blatz, Chief Justice.

ON APPEAL FROM
MINNESOTA COURT OF APPEALS

OPINION

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Hope Lutheran Church of Hastings and Greg Collins for further review be, and the same is, denied.

Dated: July 24, 2001

BY THE COURT:

Kathleen A. Blatz

Chief Justice

APPENDIX B

COURT OF APPEALS OF MINNESOTA

No. C3-00-1518

May 8, 2001, Filed

Shepherd of the Valley Lutheran Church of Hastings, a Minnesota Non-Profit Corporation, *Respondent*, vs. Hope Lutheran Church of Hastings, Minnesota, a Minnesota Non-Profit Corporation, and Greg Collins, *Appellants*.	)

Appeal from Dakota County District Court
File No. CX998791

JUDGES:
Considered and decided by Toussaint, Chief Judge, Shumaker, Judge, and Poritsky, Judge. n1

n1 Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

TOUSSAINT, Chief Judge

This lawsuit arises out of an intra-congregational dispute that resulted in the congregation of Shepherd of the Valley Lutheran Church (SOTV) voting to separate; the creation of a new church, Hope Lutheran Church (Hope); and SOTV's congregation voting to transfer SOTV's church property to Hope.

SOTV filed suit alleging that it had suffered damages as a result of a breach of fiduciary duty by its former vice president and the current president of Hope, Gregory Collins. A jury found that Collins had breached his fiduciary duty to SOTV and awarded SOTV monetary and equitable relief. Because the jury's verdict, affirmed by the trial court in its original and amended findings of fact, and conclusions of law is supported by evidence in the record, we affirm. However, we reverse and remand as to the trial court's summary denial of SOTV's taxable costs and disbursements.

FACTS

Shepherd of the Valley Lutheran Church (SOTV) was founded in 1985 and is a member of the Lutheran Church, Missouri Synod (LCMS). Congregations which affiliate themselves with LCMS agree to accept the doctrinal positions, constitution, bylaws, and resolutions of LCMS.

SOTV, as a member of LCMS, is served by a called pastor, who may be terminated only for specific reasons. In August 1997, Reverend Bruce King became SOTV's called

pastor. As a part of his duties, King conducted communion. According to LCMS, King was required to allow only those who were members of LCMS to participate in communion. King's refusal to allow non-LCMS members to participate in communion became a point of contention that eventually led to a division in the congregation.

In the spring of 1998, the vice president of SOTV, Gregory Collins, sought the termination of King. The board of elders unanimously determined that there was no basis to remove King. Collins's attempts to remove King continued--a severance package was offered to King, which he refused; an unsuccessful motion proposed reduction of King's salary to $ 0; and another unsuccessful motion proposed the amendment of the termination provisions in SOTV's constitution relating to called pastors.

Following these unsuccessful attempts to remove King, Collins and his supporters discontinued patronage and financial support of SOTV. Collins began organizing meetings that consisted of only those members of the SOTV congregation who opposed King. This group became known as the Hope faction.

Collins, leading the Hope faction, reviewed the provisions of the SOTV constitution. SOTV's constitution provides that:

> If, at any time, a separation should take place within this congregation * * * [and] a division into factions of the congregation shall occur because of doctrinal issues, the property of the congregation and all benefits therewith

> connected shall remain with those members who adhere in confession and practice [of LCMS].
>
> If division takes place for non-doctrinal reasons, the property shall remain with the majority of the communicant members.

After reviewing the SOTV constitution, Collins and other members of Hope faction laid the groundwork for the creation of Hope Lutheran Church by drafting the articles of incorporation, a constitution, and bylaws. Collins designated himself as president of Hope. Collins also met with an attorney to prepare a warranty deed conveying the church property located at 1450 West Fourth Street, Hastings, MN from SOTV to Hope.

Throughout this time period, Collins retained his position as vice president of SOTV. Collins did not inform other SOTV officers, or the general congregation, of his plans to seek separation and his efforts to form a new church. Collins also encouraged members of the Hope faction to remain quiet about their activities.

On November 13, 1998, Collins informed the president of SOTV, Al Johnson, that he intended to seek separation of the congregation at the annual meeting that was to be held on November 15, 1998. At the annual meeting, a motion to separate was put before the congregation. A majority of those present at the meeting voted to separate based on non-doctrinal reasons and to transfer SOTV's real estate and personal property (church property) to Hope without any payment of money or consideration to SOTV.

Following the annual meeting, Collins changed the locks on the SOTV sanctuary and informed the SOTV faction that they would not be welcome. On November 19, 1998, Collins executed a warranty deed, signing as the vice president of SOTV. Since November 1998, Hope has operated at 1450 West Fourth Street in Hastings. SOTV, on the other hand, has been worshipping in members' homes and rented space.

SOTV subsequently filed suit, alleging a breach of fiduciary duty by Collins. SOTV sought, as remedies for the breach of fiduciary duty, monetary damages from Collins and equitable relief in the form of the return of the church property. After hearing the evidence, the jury, by special verdict, found that (1) Collins had breached his fiduciary duty owed to SOTV, for which he was liable in the amount of $7,782.99; and (2) SOTV had a present right to possess the church property, thereby, ejecting Hope from the church property.

The trial court subsequently issued findings of fact, conclusions of law, additional and amended findings of fact, and denied judgment notwithstanding verdict (JNOV) motions by both parties. The trial court affirmed the jury verdict, awarding respondents equitable relief in the form of the return of the church property, plus monetary relief in the amount of $7,782.99 as compensation for Collins's breach of fiduciary duty. This appeal followed.

ISSUES

I. Whether the record supports a finding that Gregory Collins, the former vice president of Shepherd of the Valley

Lutheran Church (SOTV), breached a fiduciary duty owed to SOTV, entitling SOTV to monetary and equitable relief?

Whether SOTV, as the prevailing party, is entitled to taxable costs and disbursements?

ANALYSIS

I.

The underlying issue that gave rise to this lawsuit involves a doctrinal dispute amongst the congregation of SOTV. However, a court can apply neutral principles of law in resolving church property disputes so long as it does not determine disputes by examining the basis of the religious doctrine. *Jones v. Wolf,* 443 U.S. 595, 601-605, 99 S. Ct. 3020, 3024 - 3026, 61 L. Ed. 2d 775 (1979); *Piletich v. Deretich,* 328 N.W.2d 696, 701 (Minn. 1992). Because it is not necessary for us to examine the religious doctrine underlying this lawsuit, we may resolve the property dispute between SOTV and Hope Lutheran Church by applying neutral principles of law.

Appellants argue that the trial court erred when, based on the special verdict rendered by the jury, it ordered judgment in favor of SOTV and awarded equitable and monetary relief for the breach of fiduciary duty by Collins. It is the responsibility of a trial court to interpret a jury's special verdict and harmonize the jury's responses where possible. *Bartosch v. Lewison,* 413 N.W.2d 530, 532 (Minn. App. 1987). The court "must consider the evidence in a light most favorable to the verdict and sustain that verdict if possible, on any reasonable theory of evidence." *Dang v. St. Paul Ramsey*

Med. Ctr., 490 N.W.2d 653, 659 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992) (citation omitted). Where there is a reasonable theory to reconcile the verdict, we will not disturb a trial court's decision to uphold the verdict. *Tsudek v. Target Stores, Inc.*, 414 N.W.2d 466, 470 (Minn. App. 1987), *review denied* (Minn. Dec. 13, 1987).

By special verdict the jury found that (1) SOTV had a present right to the church property located at 1450 West 4th Street, Hastings, Minnesota; (2) SOTV was the proper owner of the church property; (3) Collins breached his fiduciary duty to SOTV; (4) SOTV suffered damages or losses which were caused by the breach of fiduciary duty by Collins; and (5) $7,752.99 would fairly and adequately compensate SOTV for the breach of fiduciary duty by Collins. Based on the jury's verdict, the trial court awarded SOTV both monetary damages and the right, title, and interest in the church property on the theory that SOTV was entitled to monetary and equitable relief as the result of Collins's breach of his fiduciary duty.

Appellants specifically argue (1) that the finding of breach of fiduciary duty by Collins is not supported by the weight of the evidence; and (2) that a finding of breach of a fiduciary duty does not support the award of monetary and equitable relief.

A. Fiduciary Duty

An officer of a nonprofit corporation owes a fiduciary duty to that corporation to act in good faith, with honesty in fact, with loyalty, in the best interests of the corporation, and with the care of an ordinary, prudent person under similar circumstances. Minn. Stat. § 317A.361 (2000); *see also*

Miller v. Miller, 301 Minn. 207, 219, 222 N.W.2d 71, 78 (1974) (recognizing the common law principle that officers of a corporation occupy a fiduciary relationship with the corporation); *Wenzel v. Mathies,* 542 N.W.2d 634, 641 (Minn. App. 1996) (same), *review denied* (Minn. Mar. 28, 1996). In order to establish a breach of fiduciary duty claim, a plaintiff must show that the action attacked is so far opposed to the true interests of the corporation as to lead to the clear inference that no officer thus acting could have been influenced by an honest desire to secure such interests.

Westgor v. Grimm, 318 N.W.2d 56, 59 (Minn. 1982) (quoting *Warner v. E.C. Warner Co.,* 226 Minn. 565, 573, 33 N.W.2d 721, 726 (1948)).

Collins concedes that as an officer of SOTV he owed a fiduciary duty to SOTV; but Collins argues that the evidence does not support a finding that he breached his fiduciary duty because his actions were consistent with the wishes of the SOTV members who made up the Hope faction.

Contrary to Collins's argument, as the bearer of a fiduciary duty, the law imposed on Collins the highest standard of integrity in his dealings with the other officers of SOTV and the entire SOTV congregation, not just those who were members of the Hope faction. *See Wenzel,* 542 N.W.2d at 640 (holding that a fiduciary duty is owed to all persons who have equal interests and concerns in the corporation and are subject to harm). Therefore, Collins's actions must be viewed in light of the fact that as an officer of SOTV his fiduciary duty prevented him from assuming positions, and taking actions, that conflicted with the interests of SOTV and the congregation as a whole.

Reviewing the evidence presented to the jury in the light most favorable to the verdict, there is sufficient evidence in the record to establish that Collins breached his fiduciary duty to SOTV. Collins admitted that while he was vice president of SOTV, he organized the Hope faction for the purpose of forming another church to directly compete with SOTV. Further, the formation of a new church was intended to be a method of circumventing the LCMS termination provisions governing King's pastoral services.

To achieve his goals, Collins held secret meetings and continuously encouraged secrecy among the Hope faction. Collins did not inform other SOTV officials and members of the SOTV faction of his plans to form Hope, separate from SOTV, and transfer the church property from SOTV to Hope without compensation. In fact, when Collins was asked on cross-examination, "you kept information from [SOTV's president] of a material nature, didn't you?"; Collins testified, "yes, I did." Holding secret meetings and advance preparation of legal documents is improper conduct by an officer, amounting to a breach of fiduciary duty. *Evans v. Blesi,* 345 N.W.2d 775, 779-80 (Minn. App. 1984), *review denied* (Minn. June 12, 1984). Based on Collins's own testimony, we cannot say that the jury's verdict or the trial court's amended order finding that Collins breached his fiduciary duty to SOTV was unsupported by the evidence.

Moreover, Collins is not protected by the immunity provision of the Minnesota Nonprofit Corporation Act (MNCA), Minn. Stat. § 317A.257 (2000). The MNCA provides immunity from civil liability to unpaid directors of nonprofit organizations if the director (1) acts in good faith; (2) within the scope of his responsibilities as a director; and

(3) does not commit reckless or willful misconduct. *Id.*, subd. 1; *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). The party relying upon the immunity bears the burden of proving he or she fits within the scope of the immunity. *Rehn*, 557 N.W.2d at 333.

Appellants argue, in their reply brief, that the jury instructions were improper because they failed to inform the jury of the fact that Collins is immune from a breach of fiduciary duty claim. This argument fails outright for two reasons: (1) issues not raised or argued in an appellant's brief cannot be revived in a reply brief, *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990); and (2) immunity is not an issue for the jury, but a legal question to be decided by the court in the first instance. *Rehn*, 557 N.W.2d at 331-333.

Further, Collins is not entitled to statutory immunity because his actions in bringing about the separation of the congregation and the transfer of the church property constituted "willful or reckless misconduct." It is misconduct for an officer to withhold material information from other officers and members of the corporation. *Appletree Square I Ltd. P'ship v. Investmark, Inc.*, 494 N.W.2d 889, 892 (Minn. App. 1993), *review denied* (Minn. Mar. 16, 1993). Because Collins testified that he intentionally withheld material information from other SOTV officials and certain members of the SOTV congregation, Collins's actions constituted willful misconduct. *See* Black's Law Dictionary 1014 (7th ed.) 1999 (stating that the term willful misconduct is commonly understood as intentional misconduct); *cf. Maras v. City of Brainerd*, 502 N.W.2d 69, 76 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993) (denying official

immunity to a police officer because officer's actions met the willful conduct exception where evidence established that he acted intentionally). Accordingly, the trial court did not err in determining that Collins was not entitled to the statutory immunity under the MNCA.

B. Relief for Breach of a Fiduciary Duty

Appellants argue that it was error for the trial court to award SOTV the church property as a remedy for Collins's breach of fiduciary duty. However, a claim of breach of fiduciary duty is an equitable claim. Minn. Stat. § 317A.467 (2000); *R.E.R. v. J.G.*, 552 N.W.2d 27, 30 (Minn. App. 1996). Thus, the trial court was presented with a reasonable theory by which it could vest the right, title, and interest in the church property in favor of SOTV.

Further, it was within the trial court's discretion to return the church property to SOTV. The purpose of fashioning an equitable remedy is to restore the injured party to the position it occupied before the breach of fiduciary duty. *R.E.R.*, 552 N.W.2d at 30. The fashioning of an equitable remedy is committed to the sound discretion of the trial court. *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979).

Prior to Collins's breach of his fiduciary duty, SOTV had a right, title, and interest in the church property. By awarding SOTV the church property, SOTV was returned to the position it occupied before the breach of fiduciary duty. *See Wright v. Wright*, 311 N.W.2d 484, 485 (Minn. 1981) (holding that if legal title to property is obtained through a breach of fiduciary relationship, a constructive trust arises in

favor of the person equitably entitled to the property). Therefore, we will not disturb the trial court's order awarding SOTV the church property as equitable appropriate relief for the breach of fiduciary duty by Collins.

Appellants also argue that the trial court erred when it awarded SOTV an additional $ 7,782.99 as monetary damages. Monetary damages may supplement a grant of equitable relief. *R.E.R.*, 552 N.W.2d at 30 (citing *Leach v. Leach*, 167 Minn. 489, 493, 209 N.W. 636, 638 (1926)). SOTV presented evidence that it suffered out-of-pocket expenses of $ 7,782.99 as a result of the breakup of the church. Appellants do not argue, nor do they provide any evidence that contradicts this amount. Because the trial court, which adopted the jury's findings, did not reach a conclusion contrary to evidence in the record, we will not disturb the trial court's award of monetary damages. *See Highview N. Apartments v. County of Ramsey*, 323 N.W.2d 65, 73 (Minn. 1982) (reviewing courts must sustain damages if they are within the limits of credible estimates presented at trial).

II.

In its cross-appeal, SOTV argues that the trial court erred when it failed to award its taxable costs and disbursements. The trial court has discretion in determining a party's reasonable expenses. *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491, 495 (Minn. 1984). Pursuant to Minn. Stat. § 549.02 (2000), costs and disbursements are available to the prevailing party in all cases in district court. The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered. *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998).

The trial court does not have the power to deny costs and disbursements to the prevailing party. *Quade & Sons Refrigeration, Inc. v. Minnesota Mining & Mfg., Co.*, 510 N.W.2d 256, 260 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994).

SOTV is the prevailing party because the jury found SOTV had suffered an injury as a result of Collins's actions and awarded SOTV both monetary and equitable relief. *See Kusniryk v. Arrowhead Reg'l Corr. Bd.*, 413 N.W.2d 182, 184 (Minn. App. 1987) (sustaining trial court's determination that plaintiff who was found equally negligent as defendant but was awarded damages by jury was prevailing party under section 549.04). The district court, however, summarily denied SOTV's motion for taxable costs and disbursements. Because SOTV is the prevailing party, the trial court abused its discretion when it denied costs and disbursements. Therefore, we reverse and remand for determination of respondent's taxable costs and disbursements.

DECISION

The trial court did not error in harmonizing the jury's special verdict answers to award SOTV monetary and equitable relief based on the theory that Collins breached a fiduciary duty owed to SOTV. The trial court, however, erred in summarily denying SOTV's claim for taxable costs and disbursements.

Affirmed in part, reversed in part, and remanded.

APPENDIX C

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL COURT

Court File No. CX-99-8791

August 25, 2000, Filed

Shepherd of the Valley Lutheran Church of Hastings, a Minnesota Non-Profit Corporation	)
Plaintiff,	)
vs.	)
Hope Lutheran Church of Hastings, Minnesota, a Minnesota Non-Profit Corporation, and Greg Collins	)
Defendants.	)

ADDITIONAL AND AMENDED FINDING OF FACTS AND ORDER

The above-entitled matter duly came on for post-trial hearing before the undersigned Judge of District Court on August 3, 2000, at the Dakota County Judicial Center, in Hastings, Minnesota.

Timothy I. Nolan and Kathy Kimmel appeared on behalf of Plaintiff. George May appeared with and on behalf of Defendants.

Defendants moved the Court for judgment notwithstanding the verdict, or in the alternative for a new trial. Plaintiffs moved for amended Findings of Fact.

Now, therefore, based upon all the files, records and proceedings herein, the Court being duly advised in the premises now makes the following:

ADDITIONAL AND AMENDED FINDINGS OF FACT

1. Question One of the Special Verdict Form, regarding whether the dispute in question was "doctrinal" or "non-doctrinal" in nature, was purely advisory for this Court and any appellate court which may review the decision. The question was properly before the Jury.

2. "Ejectment" was a separate cause of action by Plaintiff against Defendants. Questions Four and Five of the Special Verdict Form, regarding ejectment, were properly before the Jury.

3. Actions taken by Defendant Gregory Collins to bring about the separation of congregations and the transfer of property constitute the breach of fiduciary duty found by the Jury, and do constitute willful or reckless misconduct.

4. Finding of Fact Seven shall be **AMENDED** to read: The president of Shepherd of the Valley, Al Johnson,

recommended that the church consider Pastor Bruce King, who was referred to Mr. Johnson by another member of Shepherd of the Valley.

5. Finding of Fact Eight shall be **AMENDED** to read: Al Johnson and volunteer members of the Call Committee of the Church considered all persons referred and called Pastor King as the new pastor of Shepherd of the Valley.

6. Finding of Fact Thirteen shall be **AMENDED** to read: Close or Closed Communion is a doctrine of the Lutheran Church, Missouri Synod. The Missouri Synod's doctrine of close communion states that only members of the Missouri Synod or churches in fellowship with the Missouri Synod may take communion in a Missouri Synod church. The doctrine allows the Pastor to make case-by-case exceptions for extreme and unusual situations.

7. Finding of Fact Nineteen shall be **AMENDED** to read: Revered Coleman replied by letter, in which he expressed concern about the dispute and advised that a meeting between Pastor King and Pastor Seitz would be taking place.

8. Finding of Fact Twenty-one shall be **AMENDED** to read: Gregory Collins raised charges of willful neglect of pastoral duties against Pastor King at the **May 1998** Elders meeting. The Bylaws of Shepherd of the Valley provide that a pastor may be removed from service to the church for willful neglect of pastoral duties.

NOW, THEREFORE, based upon the forgoing ADDITIONAL AND AMENDED FINDINGS OF FACT, and upon all the files, records and proceedings herein, the Court makes the following:

ORDER

1. That Defendant Gregory Collins is not entitled to immunity under Minn. Stat. §317A.257.

2. That Defendant's motion for judgment notwithstanding the verdict is, in all things, respectfully DENIED.

3. That Defendant's motion for a new trial is, in all things, respectfully DENIED.

4. That this Court's Findings of Fact, Conclusions of Law, and Order for Judgment in the above-entitled matter, dated June 23, 2000, shall be AMENDED in accordance with the Amended Findings of Fact contained herein.

5. That Plainfiff's motions for amendments to Findings of Fact Twenty, Twenty-seven and Thirty-three are respectfully DENIED.

6. That Plaintiff's application for taxation of costs and disbursements to Defendant is DENIED.

7. That all other motions not addressed herein are DENIED.

8. That the Stay of the Order for Ejectment and Transfer of Property entered on August 3, 2000 is lifted. The Court's previous Order for Ejectment and Transfer of Property shall be enforced forthwith.

DATED: August 24,2000 BY THE COURT:

/S/_____
THOMAS POCH
Judge of District Court

APPENDIX D

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

COURT FILE NO. CX-99-8791

August 29, 2000, Filed

Shepherd of the Valley Lutheran Church of Hastings, a Minnesota Non-Profit Corporation, *Plaintiff*,	)
v.	)
Hope Lutheran Church of Hastings, Minnesota, a Minnesota Non-Profit Corporation, and Greg Collins, *Defendants*.	)

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT AND JUDGMENT

The above-entitled matter duly came on for trial by jury before the undersigned Judge of District Court on

May 22, 2000, at the Dakota County Judicial Center, in Hastings, Minnesota. Testimony was concluded on June 8, 2000.

Timothy J. Nolan and Kathy Kimmel appeared on behalf of Plaintiff. George May appeared with and on behalf of Defendants. Mark Ginder and Amy Katz Rotenberg appeared on behalf of witnesses Dr. Lane Seitz and Dr. Raymond Hartwig and the Minnesota South District of the Lutheran Church-Missouri Synod.

Defendants separated from the congregation of Shepherd of the Valley Lutheran Church and transferred possession of and title to the property consisting of the church building and contents at 1450 West 4th Street, Hastings, Minnesota to Hope Lutheran Church after establishing a new church and occupying the premises. Plaintiffs disputed the occupancy of the building and the transfer of the title to Hope Lutheran Church and sought to determine adverse claims and eject of Hope Lutheran Church from the premises, as well as damages for breach of fiduciary duty by the vice president of Shepherd of the Valley Lutheran Church, who became president of Hope Lutheran Church.

The jury was duly impaneled in the above-entitled matter and returned its Special Verdict to this Court on June 12, 2000. This Court adopts the Special Verdict as its Findings of Fact. A copy of the Special Verdict is attached and incorporated into this Order by reference.

Now, therefore, based upon all the files, records and proceedings herein and the evidence adduced at trial and the

Special Verdict of the jury, the Court being duly advised in the premises now makes the following additional:

FINDINGS OF FACT

1. Shepherd of the Valley Lutheran Church of Hastings, Minnesota is a member of the Minnesota South District of the Lutheran Church-Missouri Synod and was formerly located at 1450 West 4th Street, Hastings, Minnesota.

2. Hope Lutheran Church is an unaffiliated church currently occupying the church building and premises at 1450 West 4th Street, Hastings, Minnesota.

3. Hope Lutheran Church is primarily composed of former members of Shepherd of the Valley Church.

4. Prior to November 1998, Shepherd of the Valley occupied and had title to the church building located at 1450 West Fourth Street, Hastings, Minnesota, legally described as follows:

   Lot 1, Block 1, Schumacher 3rd Addition.

5. In 1997, Shepherd of the Valley issued a call for a new pastor.

6. Several pastors were recommended by the Missouri Synod.

7. The president of Shepherd of the Valley, Al Johnson, recommended that the church consider Pastor Bruce

King, who was referred to Mr. Johnson by personal contacts.

8. Al Johnson and the elders of the church considered all persons referred and selected Pastor King as the new pastor of Shepherd of the Valley.

9. Bruce King became pastor of Shepherd of the Valley in June 1997.

10. Al Johnson and the elders of the church scheduled a meeting for the congregation to meet Pastor King.

11. During this meeting, several pointed questions were asked by members of the congregation regarding Pastor King's beliefs regarding communion practice, the role of women in the church, and other matters.

12. As pastor of Shepherd of the Valley, Pastor King began strict enforcement of the Missouri Synod's doctrine of close (or closed) communion.

13. Close or Closed Communion is a doctrine of the Lutheran Church, Missouri Synod. The Missouri Synod's doctrine of close communion states that only members of the Missouri Synod or affiliated churches may take communion in a Missouri Synod church. The doctrine allows for case-by-case exceptions for extreme and unusual situations.

14. On several occasions, Pastor King denied communion to visitors who were not members of the Missouri Synod. On those occasions, Pastor King attempted to

explain the reasons for exception to the individual and provided literature regarding the reasons for the doctrine.

15. On some occasions, Pastor King did make exceptions regarding close communion.

16. Pastor King's policy regarding close communion was a departure from the practice at Shepherd of the Valley, as prior pastors exercised exceptions to close communion in a less restrictive manner.

17. Shortly after Pastor King began his ministry at Shepherd of the Valley, several members of the congregation began to feel that Pastor King was neglecting his duties as pastor. Examples of complaints against Pastor King included failing to visit parishioners in the hospital, not making himself available at the church, failing to get to know the members of the church, and not being open or receptive to suggestions.

18. On or about July 17, 1998, an unsigned letter containing the names and telephone numbers of members of the congregation was sent to Reverend Gerald Coleman, Pastor of Cross View Lutheran Church in Edina, Minnesota, and First Vice President of the Southern Minnesota District of the Lutheran Church-Missouri Synod, listing several complaints about Pastor King and requesting Reverend Coleman's help in resolving the dispute. The letter broadly defined the conflicts with Pastor King as involving "communion practice" and "pastoral care." The letter

suggested the removal of Pastor King as pastor of Shepherd of the Valley. The names on the letter are persons currently members of Hope Lutheran Church. One name listed is Gregory Collins, then the Vice-President of Shepherd of the Valley. Mr. Collins denied knowledge of the letter and asserted that he first became aware of its existence shortly before this trial began.

19. Reverend Coleman replied by letter, in which he expressed concern about the dispute and advised that Reverend Lowell Lubben would act as mediator in the dispute.

20. Reverend Lubben, who had been appointed a Circuit Counselor by Reverend Dr. Lane Seitz, President of the Minnesota South District, Lutheran Church-Missouri Synod, to mediate the dispute, recommended to Pastor King that he make some changes in his ministry, including that he make more exception to the policy of close communion. Pastor King declined.

21. Gregory Collins raised charges of willful neglect of pastoral duties against Pastor King at the next Elders meeting. The Bylaws of Shepherd of the Valley provide that a pastor may be removed from service to the church for willful neglect of pastoral duties.

22. The Elders investigated and found no willful neglect of pastoral duties. At least two Elders privately informed Gregory Collins that they believed Pastor King was neglectful, but not willfully so.

23. On or about August 15, 1998, Reverend Dr. Lane R. Seitz, President of the Southern Minnesota District of the Lutheran Church-Missouri Synod sent a letter to the members of Shepherd of the Valley, expressing his concern and the concern of Reverend Gerald Coleman about the ongoing dispute. In this letter, Dr. Seitz discussed the issue of close communion and urged the members to work on reconciling this issue.

24. In September and October of 1998, Gregory Collins sent two letters to selected members of Shepherd of the Valley, discussing plans for the removal of Pastor King. One copy of these two letters was available for examination by the Court at trial. In selecting members of the congregation to receive these letters, Gregory Collins deliberately omitted members of the congregation who he knew were loyal to Pastor King, including congregation president Al Johnson and several Elders. At least one of these letters contained the phrase "loose lips sink ships" and admonished the recipient to keep plans discussed in the letter secret.

25. Members of the church who received Gregory Collins' letters met privately and held a vote regarding separation from Pastor King and Shepherd of the Valley. Fifty-nine votes were cast in favor of separation and one vote was cast against separation.

26. Gregory Collins and the members of the church in favor of separation agreed, to hold a vote on separation at the November 15, 1998 voter's meeting of Shepherd of the Valley. They also decided not to

inform other members of the church who were loyal to Pastor King, including Al Johnson and the Elders.

27. Reverend Pragman learned of these plans, called Gregory Collins, spoke to Mrs. Collins, and informed her that he would notify Al Johnson of the plans if Gregory Collins did not.

28. Upon learning this, Gregory Collins called Al Johnson about three days before the voter's meeting and informed him of the plan to vote on separation.

29. Al Johnson testified that, on November 15, 1998, there were 257 communicant members of Shepherd of the Valley Lutheran Church, including children.

30. On November 15, 1998, at the annual voter's meeting of Shepherd of the Valley, a majority of members present voted to separate from Shepherd of the Valley.

31. On November 15, 1998, at the annual voter's meeting of Shepherd of the Valley, a majority of members present voted to transfer all property of Shepherd of the Valley to Hope Lutheran Church.

32. On November 15, 1998, at the voter's meeting of Shepherd of the Valley, a majority of members present voted that the dispute that led to this separation was non-doctrinal.

33. On or about November 19, 1998, Gregory Collins transferred the property of Shepherd of the Valley to Hope Lutheran Church by warranty deed, on the face

of which was typed in, "The sale price or other consideration given for this property was $1,000.00 or less. Transferred to an affiliated corporation." On the deed, "$1,000" was crossed out and "$500" was written in above it. Gregory Collins denied that he knew when the change was made.

34. Since November 1998, Hope Lutheran Church has occupied the property that is the subject of this trial, and Shepherd of the Valley has conducted worship services at various other locations.

35. On July 12, 1999, Reverend Dr. Lane R. Seitz issued a "Statement of Findings," which stated that the position of the District is that the dispute was doctrinal in nature, and that Pastor King and the remaining members of Shepherd of the Valley are the group which continued to adhere to the doctrines of the Missouri Synod.

36. Article 6 of Shepherd of the Valley's Constitution provides, in pertinent part, that "[the] congregation, subject to the limiting provisions and regulations of this Constitution and its associated Bylaws, shall have supreme power in the administration of its affairs."

37. Article 3 of Shepherd of the Valley's Bylaws provides, in part, that "[s]ufficient grounds for deposing a pastor or duly called worker shall be persistent adherence to false doctrine, scandalous life, and willful neglect of official duties or evident and protracted incapacity to perform the function of the Sacred Office."

38. Article 7 of Shepherd of the Valley's Constitution, and Article 10 of Shepherd of the Valley's Articles of Incorporation both provide that "[i]n the absence of adequate cause for dismissal, as defined in the Bylaws of the congregation, the tenure of office of a called Pastor shall be the remainder of his active life, or until the Lord called him into another field of service."

39. Article 9 of Shepherd of the Valley's Constitution, and Article 12 of Shepherd of the Valley's Bylaws, both provide that "[i]f, at any time, ... a division into factions of the congregation shall occur be use of doctrinal issues, the property of the congregation and all benefits therewith connected shall remain with those members who adhere in confession and practice to ARTICLES 2 and 3" [of the Articles of Incorporation and of the Constitution, (both of which are virtually identical)] ... If division takes place for doctrinal reasons, the property shall remain with the majority of the communicant members."

40. Article 13 of Shepherd of the Valley's Articles of Incorporation provides in part, All matters of Doctrine and of Conscience shall be decided only by the Word of God.

41. Article VII of the Constitution of the Lutheran Church-Missouri Synod provides in its entirety,

> In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the

individual congregation's right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

42. A fiduciary relationship did exist between Gregory Collins and Shepherd of the Valley at the time of the events described herein.

43. Shepherd of the Valley is required to follow the terms of its own Constitution, Articles of Incorporation and Bylaws.

Based upon the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. Based on the Constitution and Bylaws of Shepherd of the Valley and the Constitution and Bylaws of the Lutheran Church-Missouri Synod, Shepherd of the Valley has a congregational form of governance.

2. Pursuant to the Findings of Fact of the Jury, this matter is primarily doctrinal in nature.

3. Pursuant to the Findings of Fact of the Jury, the faction that voted for separation and transfer of

property did follow the terms of Shepherd of the Valley's Constitution, Articles of Incorporation and Bylaws.

4. A fiduciary relationship did exist between Gregory Collins and Shepherd of the Valley at the time of the events described herein.

5. Pursuant to the Findings of Fact of the Jury, Gregory Collins breached his fiduciary duty to Shepherd of the Valley.

6. Pursuant to the Findings of Fact of the Jury, Shepherd of the Valley suffered monetary damages as a result of the breach of fiduciary duty in the amount of $7,782.99.

7. Pursuant to the Findings of Fact of the Jury, ejectment of Hope Lutheran Church from the property in question is a proper remedy for the breach of fiduciary duty.

8. Pursuant to the Findings of Fact of the Jury, the Court shall quiet title in the property in favor of Shepherd of the Valley Lutheran Church.

NOW, THEREFORE, based upon the jury's Special Verdict, adopted by this Court, and upon the forgoing additional FINDINGS OF FACT and CONCLUSIONS OF LAW, the Court enters the following:

ORDER FOR JUDGMENT

1. That Judgment shall be entered against Defendant Hope Lutheran Church in favor of Plaintiff in their action for ejectment. Defendants are ORDERED to transfer the property at 1450 West Fourth Street, Hastings, Minnesota, to Shepherd of the Valley Lutheran Church within 14 days of entry of Judgment.

2. That Judgment shall be entered against Defendant Hope Lutheran Church in favor of Plaintiff Shepherd of the Valley in their action to determine adverse claims. The Warranty Deed that purportedly transfers the property at 1450 West Fourth Street, Hastings, Minnesota is declared null and void. Fee simple title in the property is GRANTED to Plaintiff, subject to any other recorded interest in the property.

3. That Judgment in the amount of $7,782.99 in favor of Plaintiff Shepherd of the Valley in their action for breach of fiduciary duty against Gregory Collins is GRANTED.

4. That Defendant's claims are DISMISSED.

5. The following Memorandum is hereby attached and incorporated to this Order.

PURSUANT TO MINNESOTA RULE OF GENERAL PRACTICE 125, THE COURT ADMINISTRATOR SHALL STAY ENTRY OF JUDGMENT ON THESE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT FOR THIRTY (30) DAYS FROM THE DATE OF THESE FINDINGS OF FACT, CONCLUSIONS OF

LAW, AND ORDER FOR JUDGMENT. LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: June 23, 2000 BY THE COURT:

/S/_____
THOMAS POCH
Judge of District Court

MEMORANDUM

In the Special Verdict Form presented to the Jury, the jury was asked to determine whether the dispute in question was doctrinal in nature. Based on the Court's analysis of the Constitutions, Articles of Incorporation and Bylaws of the Missouri Synod and Shepherd of the Valley, this question was not a determinative factor and was asked for informative purposes only, in the event this matter is reviewed by a higher Court.

First, this Court has determined that Shepherd of the Valley is a congregational form of church. Although contradictory evidence was presented, some of which suggested that Missouri Synod churches are hierarchical on doctrinal disputes, the Court considers the organizational documents of the Missouri Synod and Shepherd of the Valley determinative. Article VII of the Constitution of the Lutheran Church - Missouri Synod designates itself an "advisory body" only, in its relations to individual congregations. Article 6 of Shepherd of the Valley's Constitution declares the congregation the "supreme power" in the administration of its own affairs. The Missouri Synod approved this Constitution when Shepherd of the Valley affiliated with the Synod. This language is determinative and establishes Shepherd of the Valley as congregational in nature.

Second, Shepherd of the Valley did not establish in its organizational documents a procedure for resolution of doctrinal disputes which is reviewable by the civil courts. The civil courts must defer to the highest ecclesiastical authority on questions of doctrine, but are entitled to apply "neutral principles of law" to the resolution of church property

disputes. Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696 (1976); Jones v. Wolf, 443 U.S. 595 (1979). Article 9 of Shepherd of the Valley's Constitution and Article 12 of Shepherd of the Valley's Bylaws both provide that, in the case of a division of the Church over doctrinal matters, the property shall remain with the faction that adheres to the beliefs of the Missouri Synod. The Missouri Synod may express an opinion regarding such a dispute (as it did), but, pursuant to Article VII of its Constitution, that opinion is only advisory. Shepherd of the Valley is not obligated to defer to the judgment of the Missouri Synod. Should the Missouri Synod disapprove of actions of an individual congregation, it may turn to alternative remedies (such as disaffiliation) as permitted by its organizational documents. Article 13 of Shepherd of the Valley's Articles of Incorporation states that doctrinal disputes shall be decided by the Word of God. No other provisions are made for dispute resolution in doctrinal matters. Where a doctrinal dispute is brought before the civil Court for resolution, and the Court is unable to apply any standard under the United States and Minnesota Constitutions, the Court must apply the presumption of majority rule. Piletich v. Deretich, 328 N.W.2d 696 (Minn. 1982).

If, however, it were determined that the dispute was non-doctrinal in nature, the majority vote of the congregation would still be determinative. Article 9 of Shepherd of the Valley's Constitution and Article 12 of Shepherd of the Valley's Bylaws both provide that, in the case of a division of the Church over non-doctrinal matters, the property will remain with the majority faction.

Although the majority of the congregation of Shepherd of the Valley is the highest ecclesiastical authority in disputes within the individual church, the congregation must still follow its own Constitution. Articles of Incorporation and Bylaws, pursuant to the "neutral principles of law" standard. The Jury in this matter has determined that the faction which became Hope Lutheran Church did follow the Constitution, Articles of Incorporation and Bylaws of Shepherd of the Valley in bringing about the separation.

However, the Jury also determined that Plaintiff Shepherd of the Valley Lutheran Church is the rightful owner and has the right to possession of the church property. Based on these findings, the Court has determined that Defendant Hope Lutheran Church shall be ejected from the property, that the transfer deed is invalid, and that rifle in the property shall be quieted in favor of Plaintiff Shepherd of the Valley. The Court does so pursuant to the Jury's finding that Gregory Collins did breach his fiduciary duties as Vice President of Shepherd of the Valley. In Shepherd of the Valley's original Complaint, it sought, as remedies for the breach of fiduciary duty, monetary damages from Defendant Gregory Collins personally, and it asked that the transfer of the property be deemed invalid, that Defendant Hope Lutheran Church be ejected from the property, and for the Court to determine adverse claim to the title of the property in favor of Shepherd of the Valley. Monetary damages have been awarded against Defendant Gregory Collins personally; ejectment and quieting of rifle are granted pursuant to Gregory Collins' actions as President and representative of Defendant Hope Lutheran Church, acting in those capacities and for the benefit of Hope Lutheran Church.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Court File No. CX-99-8791

June 23, 2000, Filed

Shepherd of the Valley Lutheran Church of Hastings, a Minnesota Non-Profit Corporation	)
Plaintiff,	)
v.	)
Hope Lutheran Church of Hastings Minnesota, a Minnesota Non-Profit Corporation, and Gregory D. Collins,	)
Defendants.	)

SPECIAL VERDICT FORM

WE THE JURY in the above-entitled action, make the following findings of fact:

Separation

QUESTION NO. 1: Was the dispute between factions of Shepherd of the Valley Lutheran Church "doctrinal" or "non-doctrinal?"

ANSWER: Doctrinal_X_ Non-Doctrinal__

QUESTION NO. 2: Did the portion of the congregation, who eventually formed Hope Lutheran Church of Hastings, follow the Constitution, Articles of Incorporation, and By-Laws of Shepherd of the Valley Lutheran Church of Hastings in bringing about the separation vote on November 15, 1998?

ANSWER: Yes X No____

Transfer of Property

QUESTION NO. 3: Did the portion of the congregation, who eventually formed Hope Lutheran Church of Hastings, follow the Constitution, Articles of Incorporation, and By-Laws of Shepherd of the Valley Lutheran Church of Hastings in bringing about the transfer of property?

ANSWER: Yes X No____

Ejectment

QUESTION NO. 4: Does Plaintiff, Shepherd of the Valley Lutheran Church, have a present right to the church property located at 1450 West 4th Street, Hastings, Minnesota?

ANSWER: Yes X No____

QUESTION NO. 5: Is Plaintiff, Shepherd of the Valley Lutheran Church, the proper owner of the church property located at 1450 West 4th Street, Hastings, Minnesota?

ANSWER: Yes X No____

Breach of Fiduciary Duty

QUESTION NO. 6: Did Greg Collins breach his fiduciary duty to Shepherd of the Valley?

ANSWER: Yes X No____

QUESTION NO. 7: If you answered Yes to Question No. 6, then answer this question: Did Shepherd of the Valley suffer damages or losses which were caused by the breach of fiduciary duty by Greg Collins?

ANSWER: Yes X No____

QUESTION NO. 8: If you answered Yes to Question No. 7, then answer this question: What amount of money will fairly and adequately compensate Shepherd of the Valley for the breach of fiduciary duty by Greg Collins?

ANSWER: $ 7,782.99

Dated this 12 day of June, 2000
At the time of 1254 a.m./p.m.

/S/_____
Foreman/Forewoman,
Presiding Juror

This section to be completed by the Court Clerk

Jury retires at 2:38 p.m. Dated: June 9, 2000

Jury recesses at 4:45 p.m. Dated: June 9, 2000

Jury resumes at 9:03 a.m. Dated June 12, 2000

Verdict returned 1:50 p.m. Dated June 12, 2000

APPENDIX E

CONSTITUTION
OF THE LUTHERAN CHURCH
MISSOURI SYNOD

Article VII Relation of the Synod to Its Members

In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation's right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

BYLAWS
OF THE LUTHERAN CHURCH
MISSOURI SYNOD

****

F. MISCELLANEOUS PROVISIONS WITH RESPECT TO MEMBERS

****

2.39 Relation of the Synod to its Members

a. The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod. The Synod expects congregations that have not been received into membership, but are served by the Synod, and whose ministers of religion, ordained and commissioned, hold membership in the Synod, to honor its rules and regulations.

b. The Synod expects every member congregation to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of the congregation to be the judge of the applicability of the resolution to its local condition. However, in exercising such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity.

c. While retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the synodical fellowship to honor and to uphold the resolutions of the Synod. If such resolutions are of a doctrinal nature, dissent is to be expressed first within the fellowship of peers, then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or recision. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.

d. Membership of a congregation in the Synod gives the Synod no equity in the property of the congregation.

APPENDIX F

THE CONSTITUTION OF SHEPHERD OF THE VALLEY LUTHERAN CHURCH
Hastings, Minnesota

****

ARTICLE 6 - ORGANIZATION

A. VOTING MEMBERSHIP

This congregation shall be represented by, and administer all its affairs through its voting membership.

****

E. RIGHTS AND POWERS

This congregation, subject to the limiting provisions and regulations of this Constitution and its associated Bylaws, shall have supreme power in the administration of its affairs. No duly elected officers of this congregation shall have any power or authority beyond that conferred upon them by the congregation acting through its Voting Membership. Each Administrative Board, along with the Council, shall be responsible for the performance of such duties as the Voting Membership may delegate to them by special resolution. Such specially delegated rights and powers, both of officers and Boards, shall be subject to revision or complete withdrawal by the Voting Membership at its discretion.

****

ARTICLE 9 - PROPERTY RIGHTS

If, at any time, a separation should take place within this congregation, the advice of the Officers of District and Synod shall be sought. If, despite all efforts to compose differences in peace and love, a division into factions of the congregation shall occur because of doctrinal issues, the property of the congregation and all benefits therewith connected shall remain with those members who adhere in confession and practice to ARTICLES 2 and 3 of this Constitution.

If division takes place for non-doctrinal reasons, the property shall remain with the majority of the communicant members. In the event the congregation should totally disband, the property and all rights therewith connected shall be transferred to that District of the Lutheran Church - Missouri Synod of which the congregation has been a member at the time of disbanding.

ARTICLE 10 - VALIDITY OF RESOLUTIONS

All congregational matters shall be decided by a simple majority of the qualified Voting Members present at a properly convened meeting of the Voting Membership, except as otherwise provided in this Constitution and its associated Bylaws for dealing with certain situations in matters therein specifically mentioned and defined.

All matters of doctrine and of conscience shall be decided only by the Word of God.

THE ARTICLES OF INCORPORATION OF SHPEHERD OF THE VALLEY LUTHERAN CHURCH OF HASTINGS

A Minnesota Non-Profit Corporation

****

ARTICLE 9 - ORGANIZATION

E. RIGHTS AND POWERS

This congregation, subject to the limiting provisions and regulations of these articles and its associated By-Laws, shall have supreme power in the administration of its affairs. No duly elected officers of this congregation shall have any power or authority beyond that conferred upon them by the congregation acting through its Voting Membership. Each Administrative Board, along with the Council, shall be responsible for the performance of such duties as the voting Membership may delegate to them by special resolution. Such specially delegated rights and powers, both of officers and Boards, shall be subject to revision of complete withdrawal by the Voting Membership at its discretion.

****

ARTICLE 12 - PROPERTY RIGHTS

If, at any time, a separation should take place within this congregation, the advice of the Officers of District and Synod shall be sought. If, despite all efforts to compose differences

in peace and love, a division into factions of the congregation shall occur because of doctrinal issues, the property of the congregation and all benefits therewith connected shall remain with those members who adhere in confession and practice to ARTICLES 2 and 3 of these Articles of Incorporation.

If division takes place for non-doctrinal reasons, the property shall remain with the majority of the communicant members. In the event the congregation should totally disband, the property and all rights therewith connected shall be transferred to that District of the Lutheran Church - Missouri Synod of which the congregation has been a member at the time of disbanding.

ARTICLE 13 - VALIDITY OF RESOLUTIONS

All congregational matters shall be decided by a simple majority of the qualified Voting Members present at a properly convened meeting of the Voting Membership, except as otherwise provided in these Articles and its associated By-Laws for dealing with certain situations in matters therein specifically mention and defined.

All matters of Doctrine and of Conscience shall be decided only by the Word of God.

Shepherd of the Valley Lutheran Church
Voter's Meeting
November 15, 1998

The meeting was called to order by President Alan Johnson at 11:30 a.m. He introduced Thomas J. Gmeinder a professional parliamentarian and meeting facilitator to facilitate this meeting.

The standing rules for this meeting were adopted by a 2/3rds vote (see attached).

The agenda was amended to move new business up to be considered immediately after approval of minutes and was adopted.

The minutes of the previous meeting were adopted as written.

A point of order was raised and a vote of 72 in favor and 38 opposed, it was decided that this congregation will determine whether the separation is doctrinal or non doctrinal.

The motion "that the congregation finds and declares a separation pursuant to Article 9 of the Constitution and that the same exists for Non Doctrinal reasons. To authorize and direct the President or Vice President together with the Secretary or Financial Secretary to execute all documents necessary to effect transfer of all of the property of the congregation to Hope Lutheran Church of Hastings, Minnesota". Was adopted by a vote 0f 66 to favor and 41 opposed.

Motion adopted to destroy the ballots.

Meeting adjourned at 1:50 p.m.

Dated November 15, 1998

/S/_____
Thomas J. Gmeinder
Meeting Facilitator